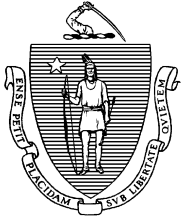


Senate, No. 2699

[Senate, May 14, 2008 – Report of the committee of conference on the disagreeing votes of the two branches, with reference to the House amendments to the Senate Bill relative to oceans (Senate, No. 2346, amended) (*amended by the House* by striking out all after the enacting clause and inserting in place thereof the text of House document numbered 4527, amended; and by striking out the title and inserting in place thereof the following title: “An Act protecting the public trust and safeguarding ocean resources.”)]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND SEVEN

AN ACT RELATIVE TO OCEANS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 10 of the General Laws is hereby amended by inserting after
2 section 35GG the following section:-

3 Section 35HH. There shall be established and set up on the books of the commonwealth
4 a separate fund to be administered by the secretary of energy and environmental affairs, as
5 trustee, in consultation with the department of environmental protection, to be known as the
6 Ocean Resources and Waterways Trust Fund. There shall be credited to the fund any revenue
7 from appropriations or other monies authorized by the general court and specifically designated
8 to be credited to the fund, any appropriation or grant explicitly made to the fund and any income

9 derived from the investment of amounts credited to the fund and the proceeds from any ocean
10 development mitigation fees established pursuant to section 18 of chapter 132A. The priority for
11 use of funds derived from compensation or mitigation for ocean development projects shall be
12 to restore or enhance marine habitat and resources impacted by the project for which the
13 compensation or mitigation shall have been received. The funds derived from compensation or
14 mitigation related to public navigational impacts shall be dedicated to public navigational
15 improvements; provided, however, that any funds for the enhancement of fisheries resources
16 shall be directed to conduct fisheries restoration and management programs. Any other
17 amounts credited to the fund shall be used, without further appropriation, only for the purposes
18 of environmental enhancement, restoration and management of ocean resources by the secretary
19 pursuant to section 4C of chapter 21A. No expenditure from the fund shall cause the fund to be
20 in deficiency at the close of a fiscal year. Monies deposited in the fund that are unexpended at
21 the end of the fiscal year shall not revert to the General Fund and shall be available for
22 expenditure in the subsequent fiscal year.

23 SECTION 2. Chapter 21A of the General Laws is hereby amended by inserting after
24 section 4B the following section:-

25 Section 4C. (a) The ocean waters and ocean-based development of the commonwealth,
26 within the ocean management planning area described in this section, shall be under the
27 oversight, coordination and planning authority of the secretary of energy and environmental
28 affairs, hereinafter referred to as the secretary, in accordance with the public trust doctrine.
29 Notwithstanding any general or special law to the contrary, the secretary, in consultation with
30 the ocean advisory commission established pursuant to subparagraph (c) and the ocean science

31 advisory council established pursuant to subparagraph (d), shall develop an integrated ocean
32 management plan, which may include maps, illustrations and other media. The plan shall: (i)
33 set forth the commonwealth's goals, siting priorities and standards for ensuring effective
34 stewardship of its ocean waters; held in trust for the benefit of the public and shall (ii) adhere to
35 sound management practices, taking into account the existing natural, social, cultural, historic
36 and economic characteristics of the planning areas; (iii) preserve and protect the public trust;
37 (iv) reflect the importance of the waters of the commonwealth to its citizens who derive
38 livelihoods and recreational benefits from fishing; (v) value biodiversity and ecosystem health;
39 (vi) identify and protect special, sensitive or unique estuarine and marine life and habitats; (vii)
40 address climate change and sea-level rise; (viii) respect the interdependence of ecosystems; (ix)
41 coordinate uses that include international, federal, state and local jurisdictions; (x) foster
42 sustainable uses that capitalize on economic opportunity without significant detriment to the
43 ecology or natural beauty of the ocean; (xi) preserve and enhance public access; (xii) support
44 the infrastructure necessary to sustain the economy and quality of life for the citizens of the
45 commonwealth; (xiii) encourage public participation in decision-making; (xiv) and adapt to
46 evolving knowledge and understanding of the ocean environment; and (xv) shall identify
47 appropriate locations and performance standards for activities, uses and facilities allowed under
48 sections 15 and 16 of chapter 132A. Notwithstanding the provisions of this section, the division
49 of marine fisheries, pursuant to chapter 130 and any other applicable general or special law,
50 shall have sole responsibility for developing and implementing any fisheries management plans
51 or fisheries regulations. Marine fisheries shall be managed in compliance with the applicable
52 rules and regulations of the division of marine fisheries and federal or interstate fishery
53 management plans issued pursuant to said chapter 130 or any other applicable general or special

54 law and shall be integrated, to the maximum extent practicable, with an ocean management
55 plan.

56 (b) An ocean management plan shall include any waters and associated submerged
57 lands of the ocean, including the seabed and subsoil, lying between the line designated as the
58 “Nearshore Boundary of the Ocean Management Planning Area”, which is depicted on a plan
59 dated January 31, 2006, prepared by the office of coastal zone management and maintained at
60 the executive office of energy and environmental affairs and with the clerks of the house and the
61 senate, and the seaward boundary of the commonwealth, as defined in 43 U.S.C. § 1312. An
62 ocean management plan may take into account the different regional characteristics of the
63 commonwealth’s waters. A plan shall address existing municipal, state and federal boundaries
64 and may include recommendations for clarifying those boundaries.

65 (c)(i) There shall be an ocean advisory commission to assist the secretary in developing
66 the ocean management plan. The commission shall consist of 3 members of the senate, 1 of
67 whom shall be appointed by the minority leader of the senate; 3 members of the house of
68 representatives, 1 of whom shall be appointed by the minority leader of the house of
69 representatives; the director of coastal zone management or his designee; the director of marine
70 fisheries or his designee; the commissioner of environmental protection or his designee; and 8
71 members to be appointed by the governor, 1 of whom shall be a representative of a commercial
72 fishing organization, 1 of whom shall be representative of an environmental organization, 1 of
73 whom shall have expertise in the development of offshore renewable energy, 1 of whom shall
74 be a representative of the Cape Cod commission, 1 of whom shall be a representative of the
75 Martha’s Vineyard Commission, 1 of whom shall be a representative of the Merrimack Valley

76 Planning Commission, 1 of whom shall be a representative of the metropolitan area planning
77 council and 1 of whom shall be a representative of the Southeastern Regional Planning and
78 Economic Development District. Members shall be appointed for terms of 3 years, except that,
79 initially, 4 members appointed by the governor shall be appointed for terms of 2 years and 3
80 members appointed by the governor shall be appointed for terms of 1 year. The appointing
81 authority may fill any vacancy that occurs in an unexpired term. The members of the
82 commission shall be selected with due regard to coastal geographic distribution.

83 (ii) The commission shall meet at least quarterly and at the discretion of the secretary.
84 The commission shall hold public meetings relative to matters within the jurisdiction of the
85 ocean management plan and shall make recommendations to the secretary for the proper
86 management and development of the plan. The secretary shall consider the recommendations of
87 the commission.

88 (iii) The office of coastal zone management and division of marine fisheries shall
89 provide technical support to the commission.

90 (d) There shall be an ocean science advisory council to assist the secretary in creating a
91 baseline assessment and obtaining any other scientific information necessary for the
92 development of an ocean management plan. The council shall consist of 9 members to be
93 appointed by the secretary, 3 of whom shall be scientists from academic institutions, at least 1
94 of whom shall be from the School for Marine Science and Technology at the University of
95 Massachusetts at Dartmouth and at least 1 of whom shall be from the Department of
96 Environmental, Earth and Ocean Sciences at the University of Massachusetts at Boston; 3 of
97 whom shall be scientists from private, nonprofit organizations, at least 1 of whom shall be a

98 scientist designated by the Massachusetts Fishermen's Partnership; and 3 of whom shall be
99 scientists from government agencies with demonstrated technical training and experience in the
100 fields of marine ecology, geology, biology, ichthyology, mammalogy, oceanography or other
101 related ocean science disciplines, at least 1 of whom shall be from the division of marine
102 fisheries. The secretary shall serve as coordinator of the council. The council shall meet at least
103 quarterly and at any other time that the secretary shall deem necessary to assist him in
104 compiling the scientific information necessary for the development of an ocean management
105 plan.

106 (e) Upon the secretary's adoption of an ocean management plan, all certificates, licenses,
107 permits and approvals for any proposed structures, uses or activities in areas subject to the
108 ocean management plan shall be consistent, to the maximum extent practicable, with the plan.

109 (f) The secretary shall develop and implement a public outreach and information
110 program to provide information to the public regarding the ocean management planning
111 process.

112 (g) The secretary shall, at least 6 months before establishing an ocean management plan
113 pursuant to this section, provide for public access to the draft plan in electronic and printed copy
114 form and shall provide for a public comment period, which shall include at least 4 public
115 hearings in at least 4 different coastal regions. The secretary shall publish notice of the hearings
116 in the Environmental Monitor within 30 days of the date of the hearing. A notice of the public
117 hearing shall also be placed, at least once each week for the 4 consecutive weeks preceding the
118 hearing, in newspapers with sufficient circulation to notify the residents of the coastal region
119 where the hearing shall be held. The hearing shall be held not sooner than 30 days and not later

120 than 35 days after the notice is published in the Environmental Monitor. The public comment
121 period shall remain open for at least 60 days from the date of the final public hearing. After the
122 close of the public comment period, the secretary shall issue a final ocean management plan and
123 shall file the plan, together with legislation necessary to implement the plan, if any, by filing the
124 same with the clerks of the house of representatives and senate.

125 (h) The secretary shall promulgate regulations to implement, administer and enforce this
126 section and shall interpret this section and any regulations adopted hereunder consistent with his
127 power to enforce the laws. These regulations shall include provisions for the review of the
128 ocean management plan, its baseline assessment and the enforceable provisions of relevant
129 statutes and regulations at least once every 5 years.

130 (i) The joint committee on state administration and regulatory oversight, in this
131 subsection called the committee, may review a proposed ocean management plan or regulations
132 proposed or adopted pursuant to this chapter. The committee shall consult with the joint
133 committee on environment, natural resources and agriculture in performing this review. The
134 committee may hold public hearings concerning a proposed ocean management plan or a
135 proposed or existing regulation and may submit to the secretary comments concerning the merit
136 and appropriateness of the plan or regulations to be promulgated and an opinion on whether the
137 proposed plan or regulations are authorized by, and consistent with, this chapter and existing
138 state laws and regulations. The secretary shall respond in writing within 10 days to the
139 committee's written questions relevant to the committee's review of a proposed plan or proposed
140 or existing regulation. The secretary shall provide to the committee, without charge, copies of
141 all public records in the secretary's custody relating to the proposed plan or regulation or action

142 in question within 10 days of a request by the committee. The committee may issue a report
143 with proposed changes to a proposed plan or proposed or existing regulation and shall transmit
144 this report to the secretary. If the secretary does not adopt the proposed changes contained in
145 the committee's report, the secretary shall notify the committee in writing of the reasons why he
146 did not adopt the changes either at the time he adopts a proposed plan or proposed regulation or
147 within 21 days of receiving the committee's report on an existing regulation.

148 (j) The ocean management plan shall be consistent with this section and all other general
149 and special laws. The ocean management plan shall not be construed to supersede existing
150 general or special laws, or to confer rights and remedies in addition to those conferred by
151 existing general or special laws.

152 (k)(1) In the geographic area subject to the ocean management plan, as described in
153 paragraph (b), commercial and recreational fishing shall be allowable uses, subject to the
154 exclusive jurisdiction of the division of marine fisheries. Any component of a plan which
155 regulates commercial or recreational fishing shall be developed, promulgated and enforced by
156 the division of marine fisheries pursuant to its authority under chapter 130.

157 (2) A component of an ocean management plan which does not have as its primary
158 purpose the regulation of commercial or recreational fishing but which has an impact on such
159 fishing shall minimize negative economic impacts on commercial and recreational fishing.
160 Prior to inclusion in an ocean management plan, a component with such a reasonably
161 foreseeable impact shall be referred to the division of marine fisheries, which shall, in writing
162 and in a timely and efficient manner, evaluate the component for its impact on commercial and
163 recreational fishing and, if possible, develop and recommend to the secretary any suggestions or
164 alternatives to mitigate or eliminate any adverse impacts.

165 (3) The director of marine fisheries, subject to the approval of the marine fisheries
166 advisory commission, shall have sole authority for the opening and closing of areas within the
167 geographic area described in subsection (b) for the taking of any and all types of fish, pursuant
168 to section 17A of chapter 130. Nothing in this section shall be construed to limit the powers of
169 the director pursuant section 17 of chapter 130 or any other provision thereto.

170 SECTION 3. Section 12B of chapter 132A of the General Laws, as appearing in the
171 2006 Official Edition, is hereby amended by striking out the definitions of “Commissioner” and
172 “Department” and inserting in place thereof the following definition:-

173 “Director”, the director of coastal zone management.

174 SECTION 4. Said section 12B of said chapter 132A, as so appearing, is hereby further
175 amended by inserting after the definition of “Facilities plan” the following definition:-

176 “Office”, office of coastal zone management.

177 SECTION 5. Section 12C of said chapter 132A, as so appearing, is hereby amended by
178 striking, in lines 1 and 3, the word “department” and inserting in place thereof, in each instance,
179 the following word:- office.

180 SECTION 6. Section 13 of chapter 132A, as so appearing, is hereby amended by
181 striking, in lines 1 and 3, the word “department”, and inserting in place thereof the following
182 word:- “office”.

183 SECTION 7. Section 14 of said chapter 132A, as so appearing, is hereby amended by
184 striking out, in line 2, the word “department” and inserting in place thereof the following word:-
185 office.

186 SECTION 8. Said chapter 132A, as so appearing, is hereby further amended by striking
187 out section 15 and inserting in place thereof the following section:-

188 Section 15. Except as otherwise provided in this section, the following activities shall be
189 prohibited in an ocean sanctuary:

190 (1) the building of any structure on the seabed or under the subsoil;

191 (2) the construction or operation of offshore or floating electric generating stations,
192 except: (a) on an emergency and temporary basis for the supply of energy when the electric
193 generating station is otherwise consistent with an ocean management plan; or (b) for
194 appropriate-scale renewable energy facilities, as defined by an ocean management plan
195 promulgated pursuant to section 4C of chapter 21A, in areas other than the Cape Cod Ocean
196 Sanctuary; provided, however, that (i) the renewable energy facility is otherwise consistent with
197 an ocean management plan; (ii) siting of all such facilities shall take into account all relevant
198 factors, including but not limited to, protection of the public trust, compatibility with existing
199 uses, proximity to the shoreline, appropriateness of technology and scale, environmental
200 protection, public safety and community benefit; and (iii) in regions where regional planning
201 agencies have regulatory authority, a regional planning agency may review the appropriate-
202 scale offshore renewable energy facilities as developments of regional impact and the applicant
203 may seek review pursuant to the authority of the energy facilities siting board to issue

204 certificates of environmental impact and public interest pursuant to sections 69K through 60O
205 of chapter 164;

206 (3) the drilling or removal of any sand, gravel or other minerals, gases or oils;

207 (4) the dumping or discharge of commercial, municipal, domestic or industrial wastes;

208 (5) commercial advertising;

209 (6) the incineration of solid waste or refuse on, or in, vessels moored or afloat within the
210 boundaries of an ocean sanctuary.

211 SECTION 9. Section 16 of said chapter 132A, as so appearing, is hereby amended by
212 striking out, in lines 14 and 15, the words “telecommunications and energy” and inserting in
213 place thereof the following words:- public utilities or the department of telecommunications and
214 cable.

215 SECTION 10. Said section 16 of said chapter 132, as so appearing, is hereby further
216 amended by striking out, in lines 20 and 28, the word “department” and inserting in place
217 thereof, in each instance, the word:- office.

218 SECTION 11. Said section 16 of said chapter 132, as so appearing, is hereby further
219 amended by striking out, in lines 29 and 30, the words “fisheries, wildlife and environmental
220 law enforcement” and inserting in place thereof the following words:- fish and game.

221 SECTION 12. Section 16A of said chapter 132A, as so appearing, is hereby amended
222 by inserting after the word “department”, in line 6, the following words:- of environmental
223 protection.

224 SECTION 13. Section 16B of said chapter 132A, as so appearing, is hereby amended
225 by striking out, in line 26 and in lines 30 to 31, the words “and the division of water pollution
226 control” and inserting in place thereof the following words:- of environmental protection.

227 SECTION 14. Section 16C of said chapter 132A, as so appearing, is hereby amended by
228 inserting after the word “department”, in lines 1 and 5, the following words:- of environmental
229 protection.

230 SECTION 15. Section 16E of said chapter 132A, as so appearing, is hereby amended by
231 inserting after the word “department”, in lines 1 to 2 and line 5, the following words:- of
232 environmental protection.

233 SECTION 16. Said section 16E of said chapter 132A, as so appearing, is hereby further
234 amended by inserting after the word “commissioner” in lines 13 to 14, the following words:- of
235 environmental protection.

236 SECTION 17. Section 16F of said chapter 132A, as so appearing, is hereby amended by
237 inserting after the word “department”, in line 1, the following words:- of environmental
238 protection.

239 SECTION 18. Said section 16F of said chapter 132A, as so appearing, is hereby further
240 amended by striking out the last sentence.

241 SECTION 19. Section 18 of said chapter 132A, as so appearing, is hereby amended by
242 inserting, after the word “of”, in line 2, the following words:- energy and.

243 SECTION 20. Said section 18 of said chapter 132A, as so appearing, is hereby further
244 amended by striking out, in lines 7 to 8 and line 9, the word “department” and inserting in place
245 thereof, in each instance, the following word:- office.

246 SECTION 21. Said section 18 of said chapter 132A, as so appearing, is hereby further
247 amended by adding the following paragraph:-

248 Any permit or license issued by a department, division, commission, or unit of the
249 executive office of energy and environmental affairs and other affected agencies or departments
250 of the commonwealth for activities or conduct consistent with this act shall be subject to an
251 ocean development mitigation fee as shall be established by the secretary of the executive office
252 of energy and environmental affairs, provided, however, that no fee shall be assessed on
253 commercial and recreational fishing permits or licenses. All the proceeds of the ocean
254 development mitigation fee shall be deposited in the Ocean Resources and Waterways Trust
255 Fund established pursuant to section 35HH of chapter 10.

256 SECTION 22. Nothing in this act shall be construed to alter the jurisdictional authority
257 of the division of marine fisheries. Nothing in this act shall be construed to prohibit the transit
258 of commercial fishing vessels and recreational vessels in state ocean waters.

259 SECTION 23. Any project that, before the effective date of this act, has (1) filed a
260 chapter 91 license application and received a written determination of completeness from the
261 department of environmental protection; or (2) if subject to section 61 of chapter 30 of the

262 General Laws, received a certificate of adequacy regarding a final environmental impact report;
263 or (3) if the project is subject to the jurisdiction of the energy facilities siting board, received
264 both a final decision from the energy facilities siting board and a certificate of adequacy
265 regarding a draft environmental impact report, shall not be subject to the requirements of said
266 ocean management plan.

267 SECTION 24. The secretary of energy and environmental affairs shall promulgate a
268 final ocean management plan by December 31, 2009. Upon adoption, an ocean management
269 plan shall formally be incorporated into the Massachusetts coastal zone management program,
270 as referenced in section 4A of chapter 21A of the General Laws.

271 SECTION 25. Section 8 of this act shall take effect upon the adoption of an ocean
272 management plan or by December 31, 2009, whichever occurs first.

273 SECTION 26. The secretary of energy and environmental affairs shall convene an
274 advisory committee for the purpose of reviewing section 16 of chapter 132A of the General
275 Laws and regulations promulgated pursuant thereto. The advisory committee shall review the
276 regulatory definitions of “public necessity and convenience” and “significant alteration”. The
277 secretary shall submit a report, together with legislative recommendations, if any, to the joint
278 committee on environment, natural resources and agriculture by December 31, 2009